



**No. 492      CUTTACK,      TUESDAY,      MARCH 31,      2015/CHAITRA 10,      1937**

The 19th March 2015

Dated the 31st December 2014

Their Workman . . . 2nd Party—Workman  
Shri Chitta Ranjan Rath,  
At Kurunti, P.O. Kusponga, Dist. Dhenkanal.

*Appearances :*

For the 1st party—Management . . . Shri B. K. Sahoo, Advocate  
 Shri Rabi Mohanty

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For the 2nd party—Workman . . . Shri S. Das, Advocate

**AWARD**

The Government of Odisha in Labour & Employment Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') have referred the following disputes for adjudication by this Court vide their Letter No. 1294—IR(ID) 15/2012-LE., dated the 21st February, 2012.

“Whether the action of the Management of M/s B.R.G. Iron & Steels Co.(P) Ltd., At Kurunti, P.O. Kusponga, Dist. Dhenkanal in dismissing Shri Chitta Ranjan Rath, Pay Loader Operator from services with effect from the 1st February 2011 is legal and/or justified ? If not, what relief Shri Rath is entitled to ?”

1. The case of the second party workman is that the first party management is an Iron & Steel Company functioning in the district of Dhenkanal, since long. There are more 1000 employees of the first party organisation. The main function of the management Company is to produce Iron & Steel and earn huge profit. The management is headed by the Managing Director and managed by the Directors and other officials. The first party organisation is an industry as defined under the I.D. Act, 1947. The second party workman is a technical and as well as qualified person. On the 1st February, 2005 the second party was appointed as Loader Operator under the first management in an interview. The main work of the second party is clerical in nature. He used to be engaged in driving the loader vehicle which loads and uploads the material. The second party has discharged his duty to the utmost satisfaction of the management continuously for a period of 6 years. During his service, in several occasions he demanded for the repairing of the vehicle which was an old one and was facing frequent breakdown. He had also raised his demand for more salary as a technical person and engaged in responsible work. The juniors and others staffs like the workman were getting more salary than the second party. In view of such demands by the second party the first party management terminated his service by way of refusal of employment on the 1st February 2011 without complying the principles of natural justice and with a false plea that the performance of the second party was not well. The management did not issue any notice nor has paid notice pay to the second party before his termination. No termination order was issued to second party. No domestic enquiry was conducted against the second party at all. No such notice was also issued to him. The first party management has not complied the provisions of the I. D. Act, 1947 at the time of termination of the services of the second party. After termination, the second party had filled his representation before the management for reinstatement, but in vain. The second party workman had also raised an Industrial Dispute before the labour machinery and the initiative taken

by the labour machinery for conciliation failed. Accordingly a report was submitted to the Government who has referred the industrial dispute between the parties to this Court for adjudication. At the time of termination the second party was getting Rs. 6,150 per month towards his salary. He was a member under the E.P.F and E.S.I scheme .The second party workman is entitled to reinstatement with full back wages.

2. In pursuance of notice issued by this Court the first party management has filed its written statement on the 4th October, 2012, when the second party had not filed any claim statement. On the 17th April 2013 the second party workman has filed his statement of claim and as per the order of his Court the party management has filed a written statement subsequently on the 8th July 2013. The case of the first party management is that the second party workman was selected as a driver of loader vehicle according to his qualification and was engaged as pay loader. His work was not of clerical as claimed by him. His work was also not satisfactory. In most of the time he was in a drunken condition at the time of his duty and neglected his duty. The second party had never raised any demand for repairing of the vehicle. The repairing of the vehicle was done as per the requirement. The second party had also not raised any demand for increase of his salary. He was not paid less, in comparison to other staffs who were equally placed. The workman had never demanded for the change of the vehicle. He was not terminated for his demand. He was terminated from his service after a disciplinary proceeding duly conducted against him in which opportunity of being heard was given to him. In the domestic enquiry notice to show cause was issued to the second party and due opportunity for hearing was given to him before his termination. As the second party was terminated from his service the question of allowing him to discharge his duty does not arise. On the 9th December 2008 the second party workman was found unloading the vehicles incoming to Lingaraj Coal using the pay loader of the company by neglecting in his duty. He was warned for such indiscipline and his salary for 3 days was with held. Despite such warning again he was found with such work of unloading the vehicles at Balaram Coal on the 11th December 2008 for which he was warned by letter dated the 11th December, 2008. In the said letter he was asked to load Bin shed to bending hopper but he refused and left the plant premises without the permission of the authority. Due to such indiscipline act the second party workman was suspended. He was assigned with the duty of a pay Loader Operator, in 'A' shift on the 18th December 2008 but without permission of his authority he had left the plant premises before arrival of his reliever. He had done so despite of the warning given by the transport contractor and the vehicle was allowed to stand idle. Due to such negligence in duty and disobedience of order by letter dated the 19th December 2008 he was warned and asked not to commit such mistake in future. On the 19th September 2009 he was found absent from his duty although he had entered inside the plant premises. He was also asked to submit his explanation for such conduct. For all his continuous misconduct the second party was again warned by letter dated the 8th October 2008. In the said letter, he was asked to be sincere in his duty and improve his attitude. As the workman was coming to the Plant Premises in drunken condition and misbehaved the superior staffs by letter dated the 22nd October 2010, he was warned and asked not to repeat such act. On 22nd October 2010 he was also found collecting illegal money from the drivers of the vehicles who came for unloading to the yard. Those drivers had made complaint against the second party and for such misconduct he

was warned by letter dated the 22nd November 2010. Due to negligence in duty by the second party the pay load work in his shift was held up on the 15th January 2011 and for such act he was warned vide letter dated the 16th January 2011. The management being disgusted charge sheeted him by letter dated the 29th January 2011 and asked him to appear before the Board of Enquiry on the 30th January 2011. Although notice was duly served on him, the second party workman did not appear before the Board of Enquiry on the 30th January 2011. The Board of Enquiry after going through his past records and hearing on the allegations made against him at different times decided to terminate his service for the better interest of the company. The second party workman deliberately remained absent the Board of Enquiry due to his usual adamant behavior as before. Due to Global Downfall of market in Steel sector and shortage of raw material, the company is running at loss and the reinstatement of the workman will be a financial burden on the first party.

3. In view of the pleading of the parties, the following issues are framed:—

#### ISSUES

- (i) “ Whether the enquiry conducted by the management if any, is fair and proper ?
- (ii) Whether the action of the Management of M/s. B. R. G. Iron & Steels Co. P. Ltd., At Kurunti, P.O. Kusponga, Dist. Dhenkanal in dismissing Shri Chitta Ranjan Rath, Pay Loader Operator from service w.e.f. the 1st February, 2011 is legal and/or justified ?
- (iii) If not, what relief Shri Rath is entitled to ?”

#### FINDINGS

4. *Issue No. (i)*—On the 8th July, 2013 the first party management had filed a petition before this Court to decide the fairness of domestic enquiry as a preliminary issue which was allowed. Accordingly Issue No. 1 was taken up as a preliminary issue. The second party workman has been examined as W.W. 1 on preliminary issue. On the other hand the General Manager, Maintenance of the first party organisation is examined as M.W. 1 and ‘X’ series are marked for identification. After scrutinising the evidence of the parties, order was passed by this Court on the 28th August, 2014 on preliminary issue i.e. “Whether the enquiry conducted by the management if any, is fair and proper ?” It was held by this Court that the domestic enquiry if any, conducted by the management was not fair and violative of principles of natural justice.

5. By the said order, dated the 28th August, 2014, the management was directed to produce his evidence on merit. In spite of several opportunities given to the first party management, no witness has been examined on behalf of the first party management on merit. The second party workman also did not chose to lead evidence.

6. *Issue No. (ii)*—Witnesses were examined on behalf of both the parties on preliminary issue. They were also cross examined by the adversary. No witness has been examined by the management on merit although it was held by this Court under Issue No. (i) (preliminary) that the domestic enquiry if any, conducted by the management was not fair and violative of the principles of natural justice. The onus is on the first party management to prove that the termination of the service of the second party workman is legal and justified. From the evidence on record it is clear that the management has not produced the original documents relating to the domestic enquiry conducted against the second party workman. The photo copies of the documents produced on

behalf of the first party management are not properly proved through legal evidence. Absolutely no foundation was led by the first party management to admit the photo copies of the documents as secondary evidence. So the photo copies of the documents produced by the management are inadmissible in evidence. From the evidence on record, it is clear that without a just and fair domestic enquiry the second party was terminated from his service by the first party management on the 1st February 2011. Hence, the dismissal of the second party workman from his service by the first party management is illegal and not justified. This issue is answered accordingly.

7. *Issue No. (iii)*—In view of my findings under Issues No. (i) and (ii) the second party workman is entitled for reinstatement in service with full back wages. This issue is answered accordingly.

Hence, the award.

#### AWARD

The dismissal of the second party workman from his service by the first party management on the 1st February, 2011 is illegal and unjustified. The second party workman is entitled for reinstatement in service along with full back wages till his reinstatement. The first party management is directed to execute the award within one month hence failing which it will be liable to pay interest at the rate of 10% per annum on the money due to the second party workman.

Dictated and corrected by me

SAROJ KUMAR SAHOO

31-12-2014

Presiding Officer  
Labour Court, Bhubaneswar

SAROJ KUMAR SAHOO

31-12-2014

Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor

M. NAYAK

Under-Secretary to Government